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COMMITTEE AGAINST TORTURE

Eleventh session

SUMMARY RECORD OF THE 156th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 9 November 1993, at 10 a.m.

Chairman: Mr. VOYAME

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4)

Initial report of Belize (CAT/C/5/Add.25)

1. At the invitation of the Chairman, Mr. Tamer and Ms. Tamer (Belize) took seats at the Committee table.

2. The CHAIRMAN, speaking in his capacity as Country Rapporteur, said that the initial report of Belize (CAT/C/5/Add.25) was extremely brief and contained none of the background information needed to facilitate not only the work of the Committee against Torture but also that of other human rights committees. On the basis of such a succinct report, the Committee could not ask pertinent questions. A more detailed and revised initial report, following the guidelines regarding the form and content of initial reports (CAT/C/4/Rev.2), should be submitted for consideration at the Committee's twelfth session. As such a small country, Belize would find it difficult to send human rights, legal and other experts to accompany the delegation which would come before the Committee to introduce the report, but it should make every effort to do so, as their presence and expertise greatly assisted the Committee in its work.

3. The Advisory Services and Technical Assistance and Information Branch of the Centre for Human Rights would be available to help the Government of Belize, if necessary, to compile its report. In the meantime, however, the Committee could depart form its usual procedure and ask questions of the representatives of Belize, who could transmit them to the Government so that the replies could be included in the revised initial report.

4. Mr. TAMER (Belize) said that he welcomed the opportunity to take note of the Committee's questions. Belize was a very small country with about 190,000 inhabitants and it was an example of stability in Central America. It made every effort to ensure that all institutions in the country respected human rights and gave effect to the provisions of international human rights law. The Government was not aware of any cases of human rights violations, but, if the Committee was in possession of information to the contrary, the necessary action would be taken.

5. Mr. BURNS (Alternate Country Rapporteur) said he regretted that the initial report of Belize was so brief. The revised report should include information on standard prison regulations, on whether capital punishment existed in Belize and, if so, how it was carried out and on the offences for which it was applicable. The present report also contained no information on how victims of torture could claim redress and whether a statutory scheme existed for compensation, as opposed to compensation through judicial action. The Government should indicate how judges were appointed, describe the structure of the police service and the military, assuming that they were separate, and provide information on courts martial. Details of the education and training provided for the police, prison officers, the military and medical practitioners would be welcome. He was pleased to note that, when

Belize had acceded to the Convention, it had not entered a reservation to article 20. However, it seemed that Belize had not made any declaration under articles 21 and 22 of the Convention. The Government should tell the Committee whether it intended to do so.

6. Mr. BEN AMMAR, referring to paragraph 4 of the report, said he was glad that the prosecution in Belize was obliged to prove to the satisfaction of the judge that confessional statements had not been obtained "by any promise of favour or advantage or by use of fear, threat or pressure by or on behalf of a person in authority". However, he wished to know why only the main provisions of the Convention had been incorporated into domestic law, when Belize, as a State party to the Convention, was bound to respect all of its provisions. Paragraph 6 of the report stated that "Where any act of torture amounts to an offence, criminal proceedings may be instituted". Did that mean that some acts of torture were not regarded as an offence? If that was the case, Belize would be contravening article 4 of the Convention, which specified that "all acts of torture" should be treated as offences under criminal law. The revised initial report should include detailed information on the Human Rights Commission of Belize, which was mentioned in paragraph 7 of the report.

7. With regard to an allegation which had been made by Amnesty International, he requested information on Mr. Luis Arturo Aribalo, a Guatemalan national who had allegedly been arrested in Belize in October 1990, tortured and then extradited to Guatemala. Paragraph 10 of the report stated that there were no preventive detention laws, but he would like further details on that point, as well as on the concept of extreme provocation referred to in Belize's Penal Code. The relationship between Belize's jurisdiction and that of the Privy Council of the United Kingdom should also be explained.

8. Mr. SORENSEN requested clarification on the statement in paragraph 8 of the report that "It is not the practice in Belize to extradite any person who there is reason to believe may be subjected to torture in the requesting State". That was particularly relevant in view of Belize's geographical location in Central America, a part of the world not renowned for wholesale respect for human rights. The revised report should give details on the number of persons who had fled to Belize to escape torture in neighbouring countries and on how the provisions of article 3 of the Convention were being implemented.

9. Mr. MIKHAILOV said that the Committee should follow its normal procedure and refrain from asking further questions until a detailed report, taking full account of the guidelines regarding their form and contents, had been made available.

10. After a procedural discussion in which Mr. MIKHAILOV, Mr. BEN AMMAR, Mr. EL IBRASHI, Mr. DIPANDA MOUELLE and Mr. KHITRIN took part, the CHAIRMAN said that further consideration of the initial report of Belize (CAT/C/5/Add.25) would be postponed until the Committee's next session, when the revised initial report would be available. However, as the second periodic report of Belize was also overdue, the two reports should be submitted as a single document by 10 March 1994.

11. Mr. TAMER (Belize) said that his Government would make every effort to submit a detailed report as soon as possible.

12. Mr. Tamer and Ms. Tamer (Belize) withdrew.

The meeting was suspended at 10.55 a.m. and resumed at 11.20 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Postponement of consideration of the initial report of Peru (CAT/C/7/Add.15)

13. The CHAIRMAN said that, on the previous day, the Ambassador of Peru had requested him to ask the Committee not to consider Peru's report immediately; since Peru had adopted a new Constitution with major amendments, the report was out of date. The Ambassador had also stressed that the recent bombing of the Information Centre of the Ministry of Foreign Affairs had made it very difficult for him to obtain answers from his Government to many of the Committee's questions.

14. The Committee had therefore decided to postpone consideration of the report of Peru, to ask that country to submit a new report in three months' time containing detailed information on acts of torture in Peru and the measures taken by the Government of Peru to prevent such acts and to invite it to send a delegation with experts capable of answering technical questions on the subject. He had communicated those decisions to the Ambassador of Peru, who had replied that he would take the necessary steps to ensure that his Government complied with the Committee's requests.

15. Mr. MIKHAILOV said that the Committee should set a date of no later than 15 February for the submission of the report.

16. The CHAIRMAN said that the Committee would confirm in writing the contents of his conversation with the Ambassador of Peru and a specific date would be set at that time.

17. Mr. LORENZO said that he had just spoken with Mr. Gil Lavedra by telephone. Mr. Gil Lavedra was in a difficult position, given the complex political situation in his country. The Argentine President was seeking re-election, which the opposition party wanted to prevent, and the President had threatened to hold a plebiscite. Mr. Gil Lavedra was a well-known member of the largest opposition party and he was representing it in talks with the Government party. Mr. Gil Lavedra had said that he hoped to be present in the Committee for the entire second week of the session, but he was not yet sure that he would be able to because the talks between the Government and the opposition might well continue into that week; he would telephone again as soon as he knew.

Progress made by the inter-sessional open-ended working group on the question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (E/CN 4/1993/WG.11/WP.2)

18. Mr. SORENSEN summarized past efforts to produce a draft optional protocol and reported on the progress made by the Open-Ended Working Group at its meeting in Geneva from 25 October to 5 November 1993. The meeting had been attended by representatives of the member States of the Commission on Human Rights and also by non-member States and observers had been sent by a number of non-governmental organizations, including Amnesty International, the International Commission of Jurists, the International Committee of the Red Cross, the Association for the Prevention of Torture and the Rehabilitation and Research Centre for Torture Victims. Four experts had also attended: Mr. Nigel Rodley, Special Rapporteur on the Question of Torture of the Commission on Human Rights; Dr. Pedro Nikken, Independent Expert of the Commission on Human Rights on El Salvador; Mr. Lovi Kellberg, Representative of the European Committee for the Prevention of Torture; and himself, on behalf of the Committee against Torture. The Working Group had completed its work on the first seven articles of the draft optional protocol and had begun its consideration of three others.

19. Focusing on the most important of those seven articles, he said that the agreed text of article 1 read: "A State Party to the present Protocol shall permit visits in accordance with this Protocol to any place in any territory under its jurisdiction where persons deprived of their liberty by a public authority or at its instigation or with its consent or acquiescence are held or may be held [provided that full respect is assured for the principles of non-intervention and the sovereignty of States]". The insertion of the phrase in square brackets had given rise to considerable controversy.

20. Another vital provision, article 4, covered the composition of the Sub-Committee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Paragraph 2 of that article stressed that the Sub-Committee must consist of experts. Unanimous agreement had been reached on its wording, which read: "The members of the Sub-Committee shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular in criminal law, prison or police administration or in the various medical fields relevant to the treatment of persons deprived of their liberty or in the field of human rights". The Sub-Committee thus had the competence it needed to carry out its work.

21. Article 4, paragraph 4, was also very significant and its wording had been agreed on by consensus following lengthy discussions: "The members of the Sub-Committee shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Sub-Committee effectively". That provision was a great achievement.

22. Article 5 related to the election of the members of the Sub-Committee. After lengthy discussions, it had been decided that the members of the Sub-Committee should not be elected by the States Parties alone, since such an

arrangement might not ensure an adequate mix of specialists, and most delegations had taken the view that the Committee itself should carry out a screening process. Agreement had been reached on the following wording of paragraph 1:

"The members of the Sub-Committee shall be elected in the following manner:

(a) Each State Party may nominate up to three persons possessing the qualifications and meeting the requirements set out in article 4 [one of whom may be a national of a State Party other than the nominating State Party].

[(b) From the nominations received, the Committee against Torture shall prepare a list of recommended candidates, taking due account of article 4 of the present protocol. This list shall consist of not less than twice the number of members of the Sub-Committee to be elected and not more than two and a half times the number of members to be elected.]

(c) The members of the Sub-Committee shall be elected by [the States parties] [the Committee against Torture] by secret ballot [from the list of recommended candidates prepared by the Committee against Torture]."

23. Paragraph 4 had also been discussed at length and agreement had been reached on the following wording:

"In the election of the members of the Sub-Committee eligible for election in accordance with article 4, consideration shall be given to equitable geographic distribution of membership, to a proper balance among the various fields of competence referred to in article 4, paragraph 2, and to the representation of different forms of civilization and of the principal legal systems.

Consideration shall also be given to a balanced representation of women and men on the basis of the principle of equality and non-discrimination."

24. No final decision had yet been taken on the wording of articles 9 and 14. Article 9 related to the sensitive issue of the relationship between the new Sub-Committee and existing regional sub-committees. Article 14 concerned the relationship between the Sub-Committee and the Committee against Torture and was thus of paramount importance to the Committee. During preliminary discussions, a wide range of proposals had been put forward. In the view of some members of the Working Group, the Committee should do no more than elect the members of the Sub-Committee, which would then have a free hand to conduct its deliberations in private. Others believed that the Committee could itself take on the task of arranging visits without any need for a new Sub-Committee; that view had, however, not prevailed because of the heavy workload and costs involved in organizing visits.

25. The draft optional protocol would shortly be submitted to the Commission on Human Rights with a proposal that another open-ended working group should meet at the same time in 1994. The Working Group would continue its reading of the articles not yet discussed and reconsider those already discussed in the light of the Commission's observations.

26. As to the remuneration of the members of the Sub-Committee, he strongly believed that it would enhance their availability, impartiality and independence, although the issue had not been discussed by the Working Group.

27. Referring to the potential conflict in article 1 between the duty of a State Party to allow visits and the principles of sovereignty and non-intervention, he said that, in his view, it was impossible to allow such visits while still insisting that the principles of non-intervention and State sovereignty should be absolutely sacrosanct and that the words to that effect in square brackets at the end of paragraph 1 should be deleted. That was crucial to the very spirit of the draft optional protocol. While some countries objected to the idea of unrestricted visits by members of the Sub-Committee, the Working Group had agreed that ratification by a country of the optional protocol should be taken to imply consent. The principle of non-intervention, if interpreted too literally, would make it impossible for the Sub-Committee to go about its work.

28. The CHAIRMAN thanked Mr. Sorensen for his presentation and said that his valuable experience was greatly appreciated in the Committee and in the European Committee for the Prevention of Torture. He proposed that further discussion of the draft optional protocol should be deferred until the Committee's next session, by which time the documents of the Working Group would have been distributed.

29. It was so decided.

Consideration of the Committee's methods of work (CAT/C/X/Misc.3)

30. The CHAIRMAN invited the members of the Committee to consider possible improvements to the Committee's methods of work and drew attention to the document CAT/C/X/Misc.3, which described the working methods of other international treaty bodies. In view of forthcoming changes in the Committee's membership, he thought it wise to leave any final decisions concerning the Committee's methods of work based on that document to the new members. However, a decision had to be taken now on whether the Committee's annual report to the General Assembly should be shortened. In the report in its present form, essential points were often lost in a mass of detail and much of the information was duplicated in the summary records; reducing the report's length and focusing on decisions would enhance its readability, save the Secretariat time and effort and make distribution easier.

31. Mr. BURNS said he agreed with the idea that the reports of States parties should be shortened, but pointed out that the Committee's report was read, inter alia, by non-governmental organizations and academics and its conclusions and much of the other information provided needed to be given in full.

32. Mrs. KLEIN-BIDMON (Representative of the Secretary-General) said that all the other treaty monitoring bodies had decided to prepare longer, more structured concluding observations or comments on each State party report examined. The comments contained a short introduction, with details of the positive aspects found in examining the report, a section on factors affecting implementation of the instrument in question, one or more paragraphs on particular matters of concern and a final section containing suggestions and recommendations.

33. There were several reasons for the adoption of that approach. One was to give delegations leaving Geneva after a dialogue with a committee suggestions for their authorities that could be followed up immediately. It was also considered useful for the committees to have a written reminder of their recommendations so that they might compare them, when examining the next report of the State party concerned, with what had been done to implement them.

34. Some committees considered that the summary usually included in the reports giving a more extensive description of the dialogue with the State party was no longer necessary, provided that summary records were prepared. The Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights had thus decided to do away with the summary and include only the concluding observations on each reporting State party in their reports.

35. It was true that, at the latest session of the Human Rights Committee, there had been no summary records. Because of the severe financial crisis facing the United Nations, there had been no funds available to recruit précis-writers and that problem was also likely to arise for the forthcoming session of the Committee on Economic, Social and Cultural Rights. The Committee against Torture had not been affected, since its précis-writers were paid from the contributions of individual Member States and not from the regular budget of the United Nations. The Human Rights Committee was concerned about the lack of summary records, which it considered important for its own jurisprudence and for the follow-up by States parties, and had appealed to the Secretary-General to have the summary records prepared later on from tape recordings, but had as yet received no reply. She stressed that the non-provision of summary records was an emergency measure and that the intention was not to do away with them for good.

36. The question of making annual reports more readable had also been considered at the meeting of chairpersons of the human rights treaty bodies, but no concrete recommendations were available as yet.

37. Mr. BURNS said that, as he understood it, the Chairman's proposal was to do away with the narrative part at the beginning of the report and include a reference to the summary records in the first paragraph. If that proposal was adopted, the conclusions would have to be filled out. At present, the Committee's conclusions on each report differed widely and ranged from three sentences to one and a half pages. A standard form of conclusion should therefore be adopted for the report of each State party.

38. Mr. MIKHAILOV said that he agreed with Mr. Burns, since it would be too difficult to summarize the discussion on each report.

39. Mr. SORENSEN said that, while he endorsed the proposed new system, he thought that the Committee should change its rules and, instead of agreeing on its conclusions in a closed meeting, should give the Country Rapporteur time to submit recommendations at the end of the session. That would make for more equal treatment of each report.

40. The CHAIRMAN said it seemed to be generally agreed that the Committee's report should be shorter and several members had endorsed Mr. Burns' suggestion that the conclusions should be more structured. He did not think that the Committee could take an immediate decision on changing the form of its conclusions because that would be a matter for the new membership. However, it might be able to take an immediate decision to shorten its report.

41. Mr. EL IBRASHI said that he advocated that course.

42. Mr. SORENSEN asked whether the Secretariat could provide an example of the new approach in reports drafted by other committees. Moreover, the new members should be informed of the Committee's decision so that reports could be drafted according to the new format as from the next session.

43. Mrs. KLEIN-BIDMON (Representative of the Secretary-General) said that the Secretariat could indeed provide examples of the concluding observations and comments adopted by the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the Committee on the Rights of the Child.

44. As to the procedure adopted, the Secretariat would assist the Country Rapporteurs and Alternate Country Rapporteurs to make the structure of future reports more uniform. As late as possible in the session, there should be a closed meeting to discuss the concluding observations. The Human Rights Committee and the Committee on the Rights of the Child handed the concluding observations to the representatives of the reporting States parties in the original language or informed them that the conclusions were available and would be made public. The conclusions of the Committee on Economic, Social and Cultural Rights went first to the State party and were issued in a press release a few days later. The Committee on the Elimination of Racial Discrimination did not issue the conclusions before they were published in the annual report, but sent them to the States parties immediately. All the other committees made their conclusions widely available to the general public.

45. Mr. EL IBRASHI said that the only problem that might arise was that some delegations attended the Committee's session for one or two days only and would like to have the Committee's response while they were still in Geneva. Under the proposed new system, they would have to wait until the end of the Committee's session or leave without its conclusions.

46. The CHAIRMAN said that that was a matter to be discussed by the new membership of the Committee.

47. Mrs. KLEIN-BIDMON (Representative of the Secretary-General) said that, for other committees, the Secretariat informed the permanent missions that the concluding observations were available and the missions collected them. For countries with no permanent mission in Geneva, the Committee would have to decide whether to send the conclusions to the State party and make them public immediately or wait to publish them.

48. Mr. DIPANDA MOUELLE asked whether the Secretariat could prepare a working paper listing all the possibilities in connection with the issue of conclusions.

49. The CHAIRMAN said that he endorsed that suggestion.

50. Mr. LORENZO said that he supported the idea of making the conclusions more uniform. Moreover, if the conclusions were drawn at the end of the Committee's dialogue with the State party, the discussion would be fresher in the minds of members the next time the report was discussed.

51. The CHAIRMAN said that issuing the conclusions at the end of discussion with the State party would also have the advantage of allowing delegations from Ministries of Justice or the Interior, who would have to implement the Committee's suggestions, to take the Committee's written conclusions home with them. However, that matter must be left to the new membership of the Committee. The present Committee would merely ask the Rapporteur and the Secretariat to ensure that reports were shorter.

The meeting rose at 12.50 p.m.